

**RESPONSE TO COMMENTS ON THE PROPOSED REOPENER OF THE COUNTY OF LOS ANGELES
MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT
(NPDES NO. CAS004001)**

Table 1. List of commenters submitting written comments before the close of the public comment period.

Letter Number	Commentor	Date Received
1	Donald L. Wolfe, County of Los Angeles Department of Public Works	June 25, 2007
2	Tracy Egoscue, Santa Monica Baykeeper and Mark Gold, Heal the Bay	June 25, 2007

Note: The letter number above corresponds to the first number in the Comment Number field in Table 2.

Table 2. Responsiveness summary for written comments submitted before the close of the public comment period.

COMMENT NUMBER	SUMMARY OF COMMENT	RESPONSE	REVISION
1.1	The County is committed to meeting water quality standards for bacteria in Marina del Rey Harbor (MDRH). Since adoption of the MDR Bacteria TMDL in 2003, the County has funded or participated in various studies and projects in excess of \$4.5 million.	<p>The Regional Board acknowledges the actions taken to date by the County of Los Angeles to improve water quality and achieve water quality standards in MDRH. Staff notes, however, that approximately \$2.2 million of the \$4.5 million spent on studies and projects were not County monies, but funds awarded to the County from various grant programs. Additionally, staff notes the extensive litigation the County has mounted to challenge the storm water permit during the last six years, all of which has taken County and State resources away from efforts to improve water quality and attain water quality standards.</p> <p>Additionally, irrespective of the efforts undertaken to date, exceedances of water quality standards continue in Marina del Rey Harbor and at Mothers' Beach. Since April 1, 2007, there have been 12 exceedance days of water quality standards at Mothers' Beach and Basins D, E and F within MDRH. These exceedances result in significant costs to the MDR communities in terms of lost tourism and related revenues, lost recreational opportunities, and illnesses incurred by the public due to poor water quality in MDRH and at Mother's Beach.</p>	NO
1.2	The MS4 Permit should be amended to incorporate BMPs from the MDRH implementation plan and monitoring to determine if compliance is being achieved, not numeric limits. This approach would be consistent with USEPA's guidance on the incorporation of TMDLs into storm water permits. On November 22, 2002, USEPA issued a memorandum that rejected	This comment is the same as Comment 11.2 the County made during the proceeding to incorporate the SMBBB TMDL summer dry weather WLAs into the MS4 permit in September of 2006. The comment is simply reiterated without any showing by the County to explain how the staff response provided during the previous proceeding was insufficient.	NO

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	<p>placing numeric limits based on TMDLs in storm water permits, recognizing that numeric limits are neither feasible nor appropriate given the variability of storm water runoff and the current lack of knowledge as to sources of pollutants and effective treatment for those pollutants.</p>	<p>The USEPA memorandum referenced is not a policy, but a “non-binding” “guidance” memorandum containing general recommendations that may or may not be applicable to a given TMDL. It notes that “there may be other approaches that would be appropriate in particular situations,” and that USEPA would make each permitting decision on a case-by-case basis considering the particular circumstances of each. (See USEPA November 22, 2002 Memorandum at pages 5-6.) Furthermore, the proposed permit amendment is not contrary to the recommendations in the memorandum. The memorandum’s recommendations relate specifically to municipal “storm water” discharges. Specifically, the memorandum states that EPA recognizes that “storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized,” and therefore numeric effluent limits may be infeasible or inappropriate. The provisions of this amendment, however, do not relate to storm events, and in fact, storm events are specifically excluded from these provisions. This reopener only relates to dry weather discharges, which are by definition not storm discharges, but rather days with less than 0.1 inch of rain. Such non storm water discharges are primarily nuisance flows, such as watering lawns, washing cars, and other incidental and nominal discharges of urban living that flow into the storm drains. The provisions are included as receiving water limitations because the TMDL’s waste load allocations are expressed as ‘exceedance days’ in the water body, i.e., receiving water limitations.</p> <p>The MS4 permit is abundantly clear that unauthorized non storm water discharges to the MS4 system are prohibited. Similar prohibitions were contained in the 1990 and 1996 LA MS4 permits. Prohibiting non-storm water discharges from the MS4, which cause exceedances of bacteria standards is the intent of the TMDL, and consistent with the permit. It is the same approach taken to incorporate the analogous</p>		

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		<p>provisions of the Santa Monica Bay Beaches Bacteria (SMBBB) TMDL into the MS4 Permit in September 2006.</p> <p>Furthermore, in the case of the MDRH Bacteria TMDL, the watershed is 2.9 square-miles; responsible agencies have undertaken a study to identify the sources of bacteria (Mother's Beach and Back Basins Bacteria TMDL Non-Point Source Study, February 2007); and there is ample knowledge regarding effective treatment of bacteria. These circumstances lend credence on scientific and technical grounds to incorporating numeric receiving water limits into the permit for dry weather discharges from the MS4 to MDRH and Mother's Beach.</p>	
1.3	<p>Inclusion of numeric limits is also directly contrary to the recommendations of the panel of experts convened by the State Water Resources Control Board. In its report, The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water associated with Municipal, Industrial and Construction Activities (June 2006), the panel specifically concluded that it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges. The panel reaches this conclusion because of the difficulty in determining the specific causative agents or the level of control needed to address a specific beneficial use impairment in a receiving water, and because no protocol exists that enables an engineer to design with certainty a BMP that will produce the desired result.</p>	<p>This comment is similar to Comment 11.4 the County made during the proceeding to incorporate the SMBBB TMDL summer dry weather WLAs into the MS4 permit in September of 2006. The comment is simply reiterated without any showing by the County to explain how the staff response provided during the previous proceeding was insufficient.</p> <p>The panel neither deliberated nor made any determination on how non-storm water discharges from MS4s that adversely affect receiving waters are to be addressed in storm water permits. Further, the proposed limits are receiving water limitations, not effluent limitations. While the State Water Board has convened workshops to discuss the panel's report, the State Board has not yet taken any action on the report. To reiterate, this panel's report does not address non-storm water discharges from point sources like the MS4. This proposed action deals with non-storm water discharges.</p> <p>In addition, nothing in the record supports the claim that complying with the permit provisions that implement the dry weather WLAs would be infeasible or inappropriate. In fact,</p>	NO

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1.4	<p>The Regional Board should not incorporate numeric bacteria limits into the Permit while the issue is being examined of whether fecal bacteria from non-point sources accurately indicate the presence of human pathogens.</p> <p>A recent study found no correlation between the risk of illness from waterborne pathogens and fecal indicators (total coliforms, fecal coliforms and enterococcus) at a beach where non point sources were the dominant fecal source. Colford, J. M., T. Wade, K. Schiff, C. Wright, J. Griffith, S. Sandhu, and S. Weisberg 2005), Recreational Water Contact and Illness in Mission Bay, California, Southern California Coastal Water Research Project, Technical Report 449.</p>	<p>the County of Los Angeles is in the process of complying with the provisions. The County has already completed two out of three low-flow diversion projects, with the third scheduled for completion in 2008. The Mothers' Beach Water Quality Circulation Project was completed in October 2006. Additional programs continue to be implemented, while existing programs are continually evaluated to assess effectiveness. See also response to Comment 1.2.</p> <p>This comment is the same as Comment 11.5 the County made during the proceeding to incorporate the SMBBB TMDL summer dry weather WLAs into the MS4 permit in September of 2006. The comment is simply reiterated without any showing by the County to explain how the staff response provided during the previous proceeding was insufficient.</p> <p>It is well documented that discharges from storm drains during dry and wet weather carry significant loads of bacteria to the shoreline in southern California. Noble et al. found that freshwater outlets, which included storm drains, failed to meet bacterial indicator standards in almost 60% of the samples, the worst of all of the strata evaluated in the regional shoreline monitoring program. Most of the standard failures near freshwater outlets were for multiple indicators and occurred repetitively throughout the five-week summer study period. (Noble, Rachel T., Dorsey, J., Leecaster, M., Mazur, M., McGee, C., Moore, D., Victoria, O., Reid, D., Schiff, K., Vainik P., Weisberg, S. 1999. Southern California Bight 1998 Regional Monitoring Program, Vol. I: Summer shoreline microbiology. Southern California Coastal Water Research Project, Westminster, CA.)</p> <p>It has also been documented that storm drains discharging to the shoreline of Santa Monica Bay contain human pathogens. Noble et al., cited above, showed through molecular tests the presence of human enteric virus genetic</p>	NO

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		<p>material in 7 of the 15 freshwater outlets, with 73% of these detections coinciding with levels of fecal coliforms that exceeded bacterial indicator thresholds.</p> <p>Furthermore, it was well documented in a landmark epidemiological study at Santa Monica Bay beaches that there are significantly increased health risks from swimming and otherwise engaging in water recreation in the ocean in the vicinity of flowing storm drains (Haile, R.W., Alamillo, J., Barret, K., Cressey, R., Dermond, J., Ervin, C., Glasser, A., Harawa, N., Harmon, P., Harper, J., McGee, C., Millikan, R.C., Nides, M., Witte, J.S. 1996. An epidemiological study of possible adverse health effects of swimming in Santa Monica Bay, Santa Monica Bay Restoration Project; Haile, R.W., Witte, J.S., Gold, M., Cressey, R., McGee, C., Millikan, R.C., Glasser, A., Harawa, N., Ervin, C., Harmon, P., Harper, J., Dermond, J., Alamillo, J., Barret, K., Nides, M., Wang, G. 1999. The health effects of swimming in ocean water contaminated by storm drain runoff. <i>Epidemiology</i> 10(4):355-363.). While there may be unknowns regarding the myriad sources of bacteria within a watershed, in light of these scientific findings, it is appropriate that the Regional Board not wait to regulate these discharges given that the health of thousands of beachgoers is at stake.</p> <p>While the integrity of the bacteria water quality standards is not presently before the Regional Board, the evidence submitted by the County does not countervail the volumes of extensive data to the contrary. The Mission Bay Study was conducted after an extensive amount of work was done to identify and <u>eliminate</u> all anthropogenic sources of bacteria to Mission Bay; this is not the case with the MDRH. In addition, the Study cautioned against extrapolating its findings beyond the study area.</p>	

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		These facts were already established by regulation when the TMDL was adopted. And the County's contentions in this regard were also rejected by the Regional Board in September 2006 when the SMBBB TMDL was incorporated into the MS4 permit.	
1.5	Incorporating numeric limits into the permit could result in the division of resources that could otherwise be devoted to permit programs and compliance with the TMDL. If a citizen lawsuit were to be filed against any of the responsible jurisdictions, including the County, significant funds and employee resources of that agency would have to be diverted from permit and TMDL programs to address that lawsuit. The proposed amendment, to the extent it imposes requirements not subject to the iterative process, invites those lawsuits.	<p>It is not appropriate to establish an iterative approach to regulate non-storm water, point source discharges. The iterative approach was designed as a component of MEP compliance, and MEP is directed to storm water discharges, not non-stormwater. In any event, compliance with the iterative process is not a safe harbor from citizen's suits, and therefore an iterative approach as opposed to that proposed provides no greater protection from such lawsuits. Furthermore, given the lack of reported compliance with the iterative approach over the last six years, and the lack of evidence of myriads of citizens suits having been filed (very few such suits have ever been filed to enforce the storm water permit), this claim has no practical basis. The County has neither explained nor submitted evidence to support how these permit provisions would themselves stimulate more lawsuits.</p> <p>Under either an iterative approach, or under the proposed receiving water limitations approach, the County is required to attain the WLAs. Only failing to attain the WLAs gives rise to citizens' suits. The County has proffered no evidence that the cost of actually attaining the WLAs would be different under an iterative approach. Failing to comply with the permit provisions, including the WLAs, is an appropriate basis for a citizens' suit.</p> <p>This comment essentially reflects the County's desire that it does not wish to be subject to enforcement for failing to comply with the permit conditions. Nevertheless, section 505 of the Clean Water Act, creating a citizen's right of action to enforce the Act's provisions, is the national policy</p>	NO

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		<p>established by Congress, and it is not incumbent on the Regional Board to endeavor to circumvent that policy.</p> <p>Finally, with respect to the alleged diversion of resources, staff are sensitive to the claim, given the vast resources the Regional Board, State Board, and the Attorney General's Office has been forced to expend to defend against the permittees', including the County's, wholly unsuccessful challenge to this permit over the last six years, up to the California Supreme Court.</p> <p>Even if preventing the County from being subjected to citizens' suits, as opposed to ensuring compliance with water quality standards, was a proper basis upon which to determine permit limits, the County has proffered no evidence to support its claim. The County has submitted no budget set aside to defend against spurious or even legitimate citizens suits. The County has submitted no explanation as to why these provisions would spur inappropriate citizens' suits. The County has submitted no estimate or evidence to support an estimate, of how much money such litigation might cost. The County has submitted no explanation or supportive evidence of how those moneys would affect the County's storm water compliance budget. Nor has the County submitted evidence that it is unable to obtain funding for such litigation without harming its compliance efforts. In fact the County has spent significant moneys during the last six years to litigate the LA County MS4 Permit. Finally, the County has submitted no evidence to rebut the presumption inherent in citizens' suits provisions of the CWA, that private enforcement will promote compliance with the Act.</p>	
1.6	The amendment's proposed language is ambiguous. The Regional Board should insert the word 'non storm water' in proposed Part 1.B and Part 2.6.	This comment is the same as Comment 1.B.15 the County made during the proceeding to incorporate the SMBBB TMDL summer dry weather WLAs into the MS4 permit in September of 2006. The comment is simply reiterated	NO

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		without any showing by the County to explain how the staff response provided during the previous proceeding was insufficient.	
		The current wording in Part 1.B and Part 2.6, which refers to 'Summer Dry Weather' is consistent with the regulatory language of the TMDL. The term 'summer dry weather' is clearly defined in the TMDL and in Part 5. DEFINITIONS of the MS4 Permit starting on page 57. It would be redundant to insert the word 'non storm water'.	
1.7	The proposed Part 2.6 should be renumbered as Part 2.3 and made a part of the iterative process. Part 2.3 of the MS4 Permit currently sets forth the iterative process to reach water quality objectives. This is the process recommended by EPA and ordered by the State Water Resources Control Board. See State Board Order WQ 99-05.	<p>This comment is the same as Comment 1.B.9 the County made during the proceeding to incorporate the SMBBB TMDL summer dry weather WLAs into the MS4 permit in September of 2006. The comment is simply reiterated without any showing by the County to explain how the staff response provided during the previous proceeding was insufficient.</p> <p>The USEPA's Wet Weather TMDL Policy and State Board WQO 99-05 discuss the use of an iterative approach to controlling pollutants in storm water discharges. For non-storm water discharges from MS4s that cause or contribute to exceedances of a water quality standard, the appropriate response is to prohibit the discharges or require compliance with the water quality standards.</p> <p>The key reasons for not employing an iterative approach to implement the MDRH Bacteria Summer Dry Weather WLAs are: (1) The WLAs do not regulate the discharge of storm water; and (2) The harm to the public from violating the WLAs is dramatic both in terms of health impacts to exposed beachgoers, and the economic cost to the region associated with related illnesses.</p>	NO
1.8	The Regional Board is without authority to reopen the Permit and amend it because the Permit has expired and a new permit application has been submitted.	As the County notes, "the terms and conditions" of the permit have been administratively extended. Those terms and conditions include the reopeners.	NO

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	<p>Instead the Regional Board must address any modification through issuance of a new permit.</p> <p>23 Cal. Code Reg. Section 2235.4 provides that the terms and conditions of an expired permit are automatically continued pending issuance of a new permit if all requirements of the Federal NPDES regulations on continuation of expired permits are complied with.</p> <p>40 C.F.R. Section 122 .62(a) provides that permits may be modified only during their terms. Although the Permit's provisions remain in effect during the current application process pursuant to 23 Cal. Code Reg. Section 2235.4 and 40 C.F.R. Section 122.6, nothing in either of these sections allows modification as opposed to issuance of a new permit.</p>	<p>No authority stands for the proposition that an administratively extended permit cannot be reopened. The two regulations cited by the County are not on point. 23 Cal. Code Regs 2235.4 merely recites that permits are administratively extended until they are reissued, and that a permittee is required to continue abiding by the terms of the existing permit when a new permit has not yet been issued. These provisions recognize the fact that often resource constraints prevent the Regional Board from reissuing permits immediately upon expiration. That is the case with the Los Angeles MS4 permit.</p> <p>Presently, the Regional Board's storm water staff's primary attention is directed to reissuance of the Ventura County MS4 permit. The Regional Board's approach to storm water regulation is generally intended to be relatively consistent across the region. Regional Board staff are working diligently with the Ventura County stakeholders to adopt an MS4 permit that is effective, enforceable, and feasible, while ensuring attainment of water quality standards. Staff does not believe it prudent to duplicate the efforts, by having two identical process run simultaneously (in Ventura and Los Angeles County), and in any event, the Regional Board lacks the staff to undertake such an effort without dramatically delaying the reissuance of both permits. Staff anticipates that many of the stakeholder concerns can be addressed in Ventura before a draft LA MS4 permit is issued, thus minimizing the ultimate time needed to readopt the LA MS4 permit. Staff expects that the Ventura MS4 permit will be presented to the Regional Board for adoption in the Fall of 2007. After that permit is adopted, the LA MS4 reissuance process will commence.</p> <p>Nevertheless, the Marina Del Rey Harbor TMDL, like the SMBBB TMDL, both regulations adopted by the Regional</p>	

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		<p>Board, require compliance with certain of their provisions prior to the time that the LA MS4 permit can be reissued. The only way to ensure compliance is to incorporate the relevant provisions into the MS4 permit. Moreover, federal regulations require that NPDES permits incorporate the terms and conditions of TMDL waste load allocations. While reissuing the permit would be preferable, timely doing so is not feasible. Accordingly, reopening the permit is the only option that would timely implement federal regulations, and the Regional Board's regulations (the TMDLs).</p> <p>The County also cites to 40 C.F.R. Section 126.62(a)(3), which does not exist. Presumably the County intended to reference 122.62, which discusses the circumstances under which a permit may be reopened. The referenced subdivision ((a)(3)) includes the phrase "Permits may be modified during their terms for this cause only as follows". The County construes the words "during their terms" as imposing a limitation upon the ability to reopen a permit.</p> <p>Notably, the permit contains a specific reopener to incorporate modifications to the basin plan. Since the proposed modification is based upon a reopener provided in the permit, either subdivision (a)(7) or (a)(3) could provide authority for the modification, and subdivision (a)(7) does not include the phrase "during their terms". Nevertheless, the permit's reopener does use the phrase "during its term".</p> <p>The County interprets the words "during its term" to infer a prohibition on reopening the permit "after its term". That interpretation is not tenable for a variety of reasons. First, staff notes that the purpose of the limits on an agency's ability to modify a permit "during its term" is to provide the permittee a five-year safe harbor such that, except in certain identified circumstances, the permittee has assurances that</p>	

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		<p>during the five-year life of the permit, efforts undertaken to comply with the permit will be reasonably likely to be all that are required of the permittee. To fulfill the purposes of the Clean Water Act, however, the regulations authorize an agency to modify a permit at an interim time if certain circumstances, applicable here, exist. These include implementing newly adopted basin plan provisions (including TMDLs). But, the purpose of the safe harbor has already been achieved during any period of administrative extension. The permittee has already had the benefit of the five year limitation.</p> <p>Second, the County's interpretation would violate public policy, as it would effectively strip a permit's reopeners, and thus the Regional Board's ability to update a permit to implement new regulations, until such time as the Regional Board can adopt a new permit. That would render many discharges beyond the Regional Board's jurisdiction for what may be, depending upon the permit at issue, several years "after its term". That is not consistent with the intent of the legislature in enacting the Clean Water Act. Nowhere is there support for the contention that the public must suffer a public health risk penalty during administrative extension.</p> <p>Third, grammatically, the County's interpretation does not follow. The words "during their terms" are not words of limitation; the limitations in the subdivision are "may be modified ... only as follows". If anything, the words "during their terms" limit the restrictions on modifying the permit. In other words, the plain meaning of the regulation only effects a limitation upon what the Regional Board may do during the term of the permit. The regulation does not address the post-term circumstances. That makes sense. After five years a new permit may be issued that includes any provisions as are appropriate. Thus, focusing on the phrase "during its term" as the County has done compels the</p>	

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		<p>contrary conclusion that NO limitations exist on reopening a permit after its term.</p> <p>Staff does not believe that interpretation would be consistent with the intent of the Clean Water Act, either. Staff believes the better interpretation is that "the terms and conditions of the permit" are administratively extended, including the reopeners and limits on reopening the permit. Thus, to the extent the terms of a permit are administratively extended, so too is the term of the permit. Thus the terms of the limits on reopeners apply during administrative extension, as they would during the ordinary term.</p> <p>Reopening the permit at this time is wholly appropriate given that compliance with the summer dry weather provisions of the TMDL is required by March 18, 2007. All co-permittees under the LA County MS4 Permit have been on notice since 2001 that the staff report/fact sheet of the Los Angeles County MS4 permit anticipated the incorporation of TMDLs. Additionally, the implementation provisions of the TMDL state that the regulatory mechanism for implementing the TMDL will be through the MS4 Permit (Basin Plan Table 7-5.1). Moreover, the permit modifications do not impose requirements on any new agencies, but only makes requirements that are already applicable to some of the permittees for Santa Monica Bay Beaches' discharges, equally applicable to those agencies' discharges to Marina Del Rey Harbor.</p>	
1.9	There is no lawful basis for making one permittee responsible for another permittee's compliance.	This comment is the same as Comment 1.B.11 the County made during the proceeding to incorporate the SMBBB TMDL summer dry weather WLAs into the MS4 permit in September of 2006. The comment is simply reiterated without any showing by the County to explain how the staff response provided during the previous proceeding was insufficient.	NO

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		The provision is derived directly from the TMDL, which was not challenged. The permittees are jointly responsible because they are discharging to and from a joint system. There are several safe harbors articulated in the fact sheet that would obviate liability by a particular jurisdiction. Moreover, nothing would prevent a permittee within a relevant subwatershed from seeking indemnity from another permittee in the same manner as joint tortfeasors, to the extent the permittee has not actually caused the violation.	
1.10	<p>The Permit's provisions must be supported by adequate findings. Water Code Sections 13263 and 13377; Code of Civil Procedure Section 1094.5. The proposed amendment does not meet this requirement. To include the proposed amendment in the Permit, the Regional Board must first make the following findings to support the amendment:</p> <ol style="list-style-type: none"> 1. A finding identifying the sources of the bacteria at issue. 2. A finding that it is technically feasible to comply with the terms of this amendment. 3. A finding that the terms of the amendment can be met through cost-effective programs that will be accepted by the public. 4. A finding that the amendment will not require the permittees to adopt controls or implement programs that go beyond the maximum extent practicable standard applicable to municipal storm water permits, 33 U.S.C. Section 1342(p)(3)(B)(iii) in order to comply with the amend. 5. A finding that the terms of the amendment are reasonably achievable. 6. A finding that the Regional Board has considered all factors set forth in the Water Code Section 13241, including (a) the environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto, (b) water quality 	<p>This comment is the same as Comment 11.12 the County made during the proceeding to incorporate the SMBBB TMDL summer dry weather WLAs into the MS4 permit in September of 2006. The comment is simply reiterated without any showing by the County to explain how the staff response provided during the previous proceeding was insufficient.</p> <p>The permit provisions do contain adequate findings, and the provisions of the authorities cited by the commenter have been complied with. The findings requested by the commenter are not necessary. The findings proposed by the County are not required to support an amendment to the permit to implement the State and federally approved TMDL that assigned the waste load allocations to these permittees. This permit modification specifically incorporates those waste load allocations, in the manner specified by the TMDL, to the permittees within the Marina del Rey Watershed.</p> <p>1) No authority is cited for the proposition that the Regional Board must identify sources of bacteria that may cause exceedances before incorporating conditions in NPDES permits to require permittees to prevent the discharge of bacteria in amounts that violate standards. Nevertheless, a source analysis is already set forth in the TMDL regulation at Basin Plan Chapter 7-5.</p>	NO

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	<p>conditions that could reasonably be achieved through the coordinated control of all facts which affect water quality in the areas, and (c) economic considerations.</p> <p>7. A finding that the amendment is reasonable in light of the Water Code Section 13241 facts.</p>	<p>2) The feasibility of the terms of the amendment is not before the Regional Board at this time. The waste load allocations were already established in a prior regulation, and federal regulations require that they be incorporated into the relevant NPDES permits. Those regulations, however, were adopted in contemplation of the fact that they are technically feasible. The MDRH jurisdictions indicated their intent to comply by diverting dry weather discharges to sanitary sewers, two out of three diversions have already occurred.</p> <p>3-5) Both the Defenders of Wildlife decision and the Rancho Cucamonga decision affirm the Regional Board's authority to require strict compliance with water quality standards, including for discharges of storm water from MS4s. The unauthorized non-storm water discharges are subject to the prohibitions contained in Parts 1 and 2.1. The MEP standard is applicable only to discharges of storm water not to non-storm water discharges. The proposed prohibition is applicable to non-storm water discharges.</p> <p>6-7) The reopener will implement a federally mandated and approved TMDL into a federal NPDES permit, consistent with all federal requirements. Neither the LA/Burbank decision, nor any other authority requires an economic analysis under such circumstances. As noted in the LA/Burbank decision, NPDES permits must implement water quality standards irrespective of cost considerations. This action does not exceed the federal standard which is abundantly clear that the discharge of unauthorized non-storm water flows containing pollutants causing or contributing to violation of WQS or WQOs is prohibited.</p> <p>The permit contains discharge prohibitions language and receiving water limitations language that prohibit any discharges that cause or contribute to violation of WQS or WQOs, See Part 1 and 2.1.</p>	

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1.11	<p>Pursuant to the notice of hearing, the County requests that the following studies, memorandum and documents in the Regional Board's files be brought to the hearing and included in the administrative record:</p> <ol style="list-style-type: none"> 1. The Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial Total Maximum Daily Load Dry- and Wet-Weather Implementation Plan. 2. Mothers' Beach and Back Basins Bacteria TMDL Nonpoint Source Study. 3. The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (State Water Resources Control Board Panel of Experts, June 2006). 4. Colford, J. M., T. Wade, K. Schiff, C. Wright, J. Griffith, S. Sandhu, and S. Weisberg (2005), Recreational Water Contact and Illness in Mission Bay, California, Southern California Coastal Water Research Project, Technical Report 449. 5. Lee, C. M., T. Lin, C. Lin, G. A. Kohbodi, A. Bhatt, R. Lee, J. A. Jay (2006) Sediments as a Reservoir for Fecal Indicators Bacteria at Three Santa Monica Bay Beaches, Water Research. In press. 6. Noble, R. T., Griffith, J. F., Blackwood, A. D., Fuhrman, J. A. Gregory, J. B. Hernandez, X., Liang, X., Bera, A. A., and Schiff, K., Mutitiered Approach Using Quantitative PCR to Track Sources of Fecal Pollution Affecting Santa Monica Bay, California. Applied and Environmental Microbiology (February 2006). 7. EPA memorandum, dated November 22, 2002, entitled, Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs. 8. Letter dated May 31, 2007, from the Santa Monica BayKeeper and NRDC to the County of Los Angeles 	<p>The following items enumerated in the County's letter are already part of the administrative record and will be brought to the hearing per your request: 1, 2, 3, 7.</p> <p>Items 4, 5, 6, and 9 are not part of the Administrative Record for this proposed action; the County has not submitted these documents to staff. The County had the opportunity to submit evidence for the consideration of the Board by June 25, 2007, and did not timely do so. Nevertheless, the County has been invited to provide an offer of proof as to their contents, establish the documents' relevance, and demonstrate good cause for late inclusion.</p> <p>Item 8 is a 60-day notice of intent to sue the County of Los Angeles and the City of Malibu for violations of the storm water permit. Regional Board staff believes the document has no relevance to this proceeding. The fact that on one occasion NRDC et al may be exercising its rights to file a citizen's suit does not have a bearing upon whether the MDRH TMDL should be incorporated into the MS4 in the same manner as the SMBBB TMDL. Nevertheless, the County has been invited to submit an offer of proof as described above. See also response to Comment 1.5.</p>	NO

**RESPONSE TO COMMENTS ON THE PROPOSED REOPENER OF THE COUNTY OF LOS ANGELES
MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT
(NPDES NO. CAS004001)**

COMMENT NUMBER	SUMMARY OF COMMENT	RESPONSE	REVISION
	and the City of Malibu. (The letter reflects that a copy was sent to both Francine Diamond, Chair, and Deborah Smith, Acting Executive Officer of the Regional Board.) 9. Ishii, S., Hansen, D. L. Hicks, R. E., Sadowsky, M. J., Beach Sand and Sediments are Temporal Sinks and Sources of Echerichia Coli in Lake Superior Environ. Sci. Technology., 41 (7). Web Release Date: March 1,2007.		
1.12	The Regional Board should defer consideration of the proposed amendment at this time. Moreover, any amendment should incorporate an iterative, BMP-based approach to achieve the desired water quality goals.	This comment is similar to Comment 11.23 the County made during the proceeding to incorporate the SMBBB TMDL summer dry weather WLAs into the MS4 permit in September of 2006. No compelling reason has been set forth to delay consideration of the proposed amendment. Awaiting the Permit's renewal would be inconsistent with the terms of the TMDL, which requires compliance with dry weather WLAs by March 18, 2007. Furthermore, 40 CFR section 122.44(d) requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. The regulatory provisions of the TMDL state that the primary mechanism for implementing the TMDL will be through the MS4 Permits (Basin Plan Chapter 7-5). Failing to incorporate the waste load allocation into the permit would be contrary to federal regulations. See also response to Comment 1.7.	NO
2.1	This reopener is consistent with the September 14, 2006 amendment of the LA County MS4 NPDES Permit which incorporated the Santa Monica Bay Beaches Bacteria TMDL WLAs for summer dry weather. Although Marina del Rey Watershed is a subwatershed of the Santa Monica Bay Watershed, this reopener is required because there are separate summer dry weather Bacteria TMDLs for each. Santa Monica Baykeeper and Heal the Bay support the	Comment noted.	NO

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	proposed LA MS4 reopener to incorporate the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL WLAs for summer dry weather.		
2.2	All monitored locations in MDR must meet state beach bacteria health standards 100% of the time during summer dry weather from April 1 to October 31. Data collected since April 1, 2007 show at least 10 exceedance days of the MDR Bacteria TMDL requirements from summer dry weather. Seven of these exceedance days were at Mothers Beach, a beach frequented by families.	On April 26, 2007, a section 13225 and 13267 enforcement letter was sent by the Executive Officer to the jurisdictional group requiring the submittal of information regarding the exceedances at Mothers' Beach; the response is currently under review.	NO